

COMMUNITY AFFAIRS

Division Of Codes And Standards

Hotels and Multiple Dwellings

Child-Protection Window Guards

Adopted Amendments: N.J.A.C. 5:10-27.1 and 27.4

Adopted New Rules: N.J.A.C. 5:10-27-3 and 5:10-27 Appendices 27A and 27B

Proposed: October 2, 2006 at 38 N.J.R. 3947(a).

Adopted: December 14, 2006 by Susan Bass Levin, Commissioner,

Department of Community Affairs.

Filed: January 4, 2007 as R. 2007, d. 40, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 55:13A-7.16

Effective Date: February 5, 2007.

Expiration Date: January 9, 2009.

SUSAN BASS LEVIN, Commissioner

Summary of public comments and agency responses: **Comments were received** from Nicholas J. Kikas, Government Affairs Coordinator of the New Jersey Apartment Association (NJAA), and from Ken Sauter, Esq., LAC Chairman, and Curt Macysyn, CAE, Executive Vice President, respectively, of the New Jersey Chapter of the Community Associations Institute (CAI-NJ).

COMMENT: In the proposed *Tenant's Guide*, tenants are instructed to notify the owner of the building or of the apartment or the person who is in charge of maintenance if there is a problem with a window guard. CAI-NJ recommends that the language be clarified with regard to window guards in common areas of condominium, cooperative or mutual housing corporation buildings by specifying that notice is to be given to the association or the person in charge of the association's maintenance.

RESPONSE: The recommended clarification is being added upon adoption.

COMMENT: A "safe harbor" provision should be included to protect an owner who is denied access to the apartment for a biannual inspection by an uncooperative tenant..

RESPONSE: The Department recognizes that a landlord who makes a good faith effort to comply with the rules and is prevented from doing so by one of the very tenants whom the rules are intended to protect should not be subject to penalty. There is no need to specify this for window guards, since it would be the case for *any* violation within a unit. N.J.A.C. 5:10-5.1(c) requires unit occupants to give the owner access, after reasonable notice, in order to correct violations. If a tenant denies access, the owner should report the tenant's violation of the rules to the Bureau of Housing Inspection for appropriate action.

COMMENT: The dates for biannual inspections proposed at N.J.A.C. 5:10.27.1(e) are in excess of the statutory requirement that inspections be done "twice annually." The spring inspection dates should be expanded to allow inspections between March 1 and May 1, rather than March 15 and May 1, in order to coincide with regular maintenance schedules on air conditioning units, thus limiting intrusion into tenants' units and fostering streamlined maintenance operations.

RESPONSE: Inspections done on two successive days could be said to be done “twice annually,” but this would hardly comport with the clear intent of the statute that there be periodic inspections. Window guards should be checked before and after the time of year in which windows are most likely to be kept open, namely the summer, and spring and autumn inspections are therefore appropriate. The proposal is being revised on adoption to make the period for the spring inspection start on March 1, in recognition of the need expressed by the commenter to minimize the frequency with which the owner or owner’s representative must obtain permission for entry from the tenant.

COMMENT: The prohibition against using window stops in conjunction with installed window guards, and requiring their removal where they are already installed, is *ultra vires* because it conflicts with the statutory provision that “window stops may be utilized as a safety enhancement when used in addition to installed window guards.” The proposed language in N.J.A.C. 5:10-27.4(e) 2 and Appendix 27B requiring removal of window stops if they obstruct full opening of the window should be removed, since window stops are *designed* to obstruct full opening of the window.

RESPONSE: The language in N.J.A.C. 5:10-27.4(e) 2 and in Appendix 27B specifically refers to installation of window stops in the track of the *lower* window. It is therefore consistent with statutory language requiring protection by window guards of the full openable area of each lower window, which, in turn, recognizes the need to comply with ventilation requirements. This proposed rule language makes it clear that the use of window stops in the tracks of the upper window, in order to bar access to the unprotected upper half of the window area, would be permitted. Thus read, it is consistent with both

the quoted text of the statute and with the clear statutory intention of protecting children from falling while still ensuring adequate ventilation.

COMMENT: In proposed N.J.A.C. 5:10-27.1(g), there is no mention or implementation of the requirement set forth in subsection d. of N.J.S.A. 55:13A-7.13.

RESPONSE: Subsection d. of N.J.S.A. 55:13A-7.13 requires the owner, lessor, agent or other manager to provide the tenant with an orientation on the safe use and manipulation of window guards upon installation and annually thereafter. The proposed N.J.A.C. 5:10-27.1(g) restates the statutory requirement that the annual orientation be provided prior to March 1 of each year. However, the commenter is correct in noting that there is no reference in the rule to the statutory requirement of orientation at the time of installation. This language is being added on adoption.

COMMENT: N.J.A.C. 5:10-27.1(g) should be amended to require that, in order for the orientations to be required, a building must be *both* subsidized *and* have tenants receiving rental assistance, instead of one or the other. An orientation session should not be required merely because one or more of the tenants receives rental assistance, since this might stigmatize any such tenant(s) in the eyes of the other tenants.

RESPONSE: Paragraphs (1) and (2) of subsection b. of N.J.S.A. 55:23A-7.16 separated by an “and,” not an “or,” thereby requiring the orientation programs both in subsidized buildings and in buildings with one or more rental assistance recipient in residence, in either case provided they are more than four stories in height.

COMMENT: Given the voluntary nature of the window guard program, owners should be able to advise tenants that they can request that window guards be installed only on

certain windows, such as in a child's bedroom. A clarification to that effect should be added to Appendix 27B.

RESPONSE: Given the voluntary nature of the window guard program, installation of guards on windows in a unit need not be an all-or-nothing proposition. The clarification will be made on adoption.

COMMENT: The model lease and notice language, while accurate, may be too difficult for many tenants to quickly and easily comprehend. There should be a plain language alternative provided. The commenter provided a draft of such alternative language.

RESPONSE: The rules allow, but do not require, the use of the model language.

Alternative language that provides the same information would also be acceptable.

Language will be added on adoption to make it clear that owners, or associations of owners, who wish to use alternative language may submit it to the Bureau for prior approval in order to be sure of being in compliance.

COMMENT: The proposed provision at N.J.A.C. 5:10-27.1(c) 1. requiring verbal notification at the time of lease signing needs to be clarified to indicate that only the initial lease signing is meant, in accordance with the intent of the statute.

RESPONSE: Paragraph (1) of subsection b. of N.J.S.A. 55:13A-7.14 says that the verbal notice shall be given "at the time of lease signing." Since the statute does not restrict this to the initial lease signing, there is no basis for having the rule do so.

COMMENT: The proposed text of N.J.A.C. 5:10-27.1(c) should be rewritten to ensure that all required information is required in every tenant's lease, that a uniform lease, regardless of the floor on which a unit is located, may continue to be used, and that owners may continue to install window guards as a routine matter.

RESPONSE: The existing text does not preclude use of a common lease with all the information required, whether or not tenants are in a ground-floor unit. As has been indicated, the model lease notice may be changed so long as the required information is provided, and the rule is being amended on adoption to provide for approval by the Bureau of alternative language that is submitted to it by owners or their associations.

Federal Standards Statement

No Federal standards analysis is required because these rules are not being proposed for amendment under the authority of, or in order to implement, comply with, or participate in, any program established under, Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows (additions to proposal indicated in bold face with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

5:10-27.1 Child-protection window guards; when required

(a)-(b) (No change.)

(c) All leases offered to tenants in multiple dwellings shall contain a clear, legible and conspicuous notice, in prominent boldface type, advising tenants and prospective tenants that the owner is required by law to provide, install and maintain window guards in the unit of any tenant who has a child or children 10 years of age or younger living in the unit or regularly present there for a substantial period of time and makes a written request to the owner or the owner's representative that the window guards be installed, and that the owner is also required, upon the written request of any such tenant, to provide, install and maintain window guards in the building hallways to which persons in the tenant's unit

have access without having to go out of the building ***, other than hallways on the first floor in which there is no window having a sill more than six feet above grade at the location of the window or having any other condition at that location necessitating installation of a window guard*.** A lease offered to a tenant of a first floor unit shall state that window guards are not required to be installed in the unit or in hallways on the first floor unless the sill of any window in the unit is more than six feet above grade at the location of the window or there is any other hazardous condition at that location necessitating installation of a window guard. A model lease and notice provision containing the required information is set forth at Appendix 27A of this subchapter, incorporated herein by reference. ***Owners, or organizations representing owners, seeking approval of alternative language as meeting the requirements of the act and of this subchapter may submit such alternative language to the Bureau for its review and approval. ***

1. (No change.)

(d) (No change.)

(e) Semi-annually, between March *[15]* ***1*** and May 1 and between September 1 and December 1, the owner, or other person responsible for the management or control, of a multiple dwelling ***or apartment, as the case may be, *** in which child-protection window guards have been installed by the owner, shall inspect each such window guard to ensure that it remains sound and in conformance with the provisions of this subchapter, and shall enter a record of such inspection in a log, which shall be maintained as a permanent record as long as the window guard remains installed, and for five years thereafter, and which shall be available upon request to the Bureau or its duly-authorized

representative. The log shall indicate the date of inspection, the unit(s) inspected, the results of the inspection, and the name and title of the person performing the inspection, who shall sign the log.

(f)-(g) (No change.)

***(h) The owner of the building or of the apartment, as the case may be, shall provide a window guard orientation, as required by subsection (g) of this section, to educate each tenant at the time that window guards are installed in such tenant's unit.** *

APPENDIX 27B

TENANT'S GUIDE TO WINDOW GUARD SAFETY

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What should a tenant do if there is a problem with a window guard or if the owner will not provide and install a window guard?

If there is a problem with a window guard, the tenant should notify in writing the owner of the building or of the apartment or the person who is in charge of maintenance.

***If the apartment is in a condominium, cooperative or mutual housing corporation building, the tenant should notify in writing the owner of the apartment or the person in charge of maintenance of the apartment or, if the problem is with a window in a common area, the tenant should notify in writing the condominium association or cooperative or mutual housing corporation or the person who is in charge of the association's maintenance.** *

A tenant should never remove or tamper with a window guard. A tenant should regularly check window guards to make sure that to make sure that they have not become loose or damaged in any way. If there is a problem that the *[landlord]* * **owner*** or

maintenance person fails or refuses to fix within a reasonable time after being told about it, the tenant can contact the municipal housing or building department or the Bureau of Housing Inspection of the New Jersey Department of Community Affairs (609-633-6210). The tenant should contact the Bureau of Housing Inspection if the owner fails or refuses to provide and install a window guard after receiving a written request from the tenant.

How much can a tenant be required to pay for installation of a window guard?

By law, the owner of an apartment can charge a tenant no more than twenty dollars (\$20.00) for each window guard ***that the tenant asks in writing to have*** installed in the tenant's apartment.

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